

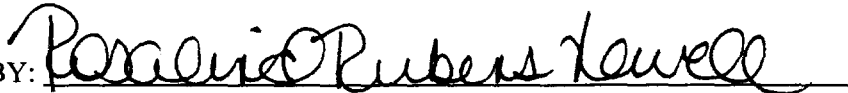
Entered - 10/26/98 - sb
CL98L0695 - DIANNE C. MITCHELL

CLAIM OF: **CAROL M. BELL,**
through her attorney,
Shea E. Roberts
1409 Peachtree Street, NE
Atlanta, Georgia 30309

00- *R* -1819

For damages alleged to have been sustained as a result of property damage
due to the installation of an underground equipment vault by Bellsouth
Telecommunications, Inc. on June 15, 1998 at 251 Elmira Place.

THIS ADVERSED REPORT IS APPROVED

BY: 
ROSALIND RUBENS NEWELL
DEPUTY CITY ATTORNEY

DEPARTMENT OF LAW - CLAIM INVESTIGATION SUMMARY

Claim No. **98L0695**

Date: October 27, 2000

Claimant /Victim CAROL M. BELL
BY: (Atty) Shea E. Roberts
Address: 1409 Peachtree Street, NE, Atlanta, Georgia 30309
Subrogation: _____ Claim for Property damage \$ not stated Bodily Injury \$ _____
Date of Notice: 10/07/98 Method: Written, proper X Improper _____
Conforms to Notice: O.C.G.A. §36-33-5 _____ X Ante Litem (6 Mo.) _____ X
Date of Occurrence 06/15/98 Place: 255 Elmira Place
Department Planning Development and Neighborhood Conservation Division: Buildings
Employee involved _____ Disciplinary Action: _____

NATURE OF CLAIM: The claimant alleges her property has been damaged due to the installation of an underground equipment vault by Bellsouth Telecommunications, Inc. in violation of the City's building codes. The claimant has withdrawn her claim.

INVESTIGATION:

Statements: City employee X Claimant Others Written Oral X
 Pictures Diagrams Reports: Police Dept Report Other
 Traffic citations issued: City Driver Claimant Driver
 Citation disposition: City Driver Claimant Driver

BASIS OF RECOMMENDATION:

Function: Governmental _____ X _____ Ministerial _____
Improper Notice _____ More than Six Months _____ Other _____ Damages reasonable _____
City not involved _____ Offer rejected _____ Compromise settlement _____
Repair/replacement by Ins. Co. _____ Repair/replacement by City Forces _____
Claimant Negligent _____ City Negligent _____ Joint _____ Claim Abandoned _____ X

Respectfully submitted,

INVESTIGATOR - DIANNE C. MITCHELL

RECOMMENDATION:

Pay \$ _____ Adverse ☒ Account charged: 1A01 _____ 2J01 _____ 2H01 _____
 Claims Manager: [Signature] Concur/date 10-27-02
 Committee Action: _____ Council Action _____

LAW OFFICES
McCULLOUGH SHERRILL, LLP

ENTERED - 10-26-98 - SB
98L0695 - DIANNE MITCHELL

*Rec'd 10-17-98
orig to D Mitchell
cc Simon
re*
Mitchell
10/16/98
JS

Writer's Direct Number
(404) 881-3812
Direct Facsimile: (404) 892-6766
E-mail Address: sroberts@mslegal.com

October 2, 1998

VIA U.S. MAIL

The Honorable William Campbell
Mayor, City of Atlanta
55 Trinity Avenue, S.W.
Atlanta, GA 30303

VIA U.S. MAIL

Susan P. Langford, Esq.
Acting City Attorney, City of Atlanta
68 Mitchell Street, S.W.
Atlanta, Georgia 30335

VIA FACSIMILE AND U.S. MAIL

Norman A. Koplon, P.E.
Director, Bureau of Buildings
68 Mitchell Street, S.W.
Suite 3900
Atlanta, Georgia 30335-0309

VIA FACSIMILE AND U.S. MAIL

Rhona E. F. Reynolds, Esq.
BellSouth Telecommunications, Inc.
125 Perimeter Center West
Atlanta, Georgia 30346

VIA U.S. MAIL

Mr. Jeff Schrantz
G&K Services, Inc.
1770 Corporate Drive, N.W.
Norcross, Georgia 30093-2928

**Re: Commercial Equipment Installation at 255 Elmira Place, Atlanta, DeKalb
County, Georgia**

Dear Madame and Messieurs:

This firm represents Ms. Carol M. Bell, the owner of a residence located at 251 Elmira Place, Atlanta, DeKalb County, Georgia. Previous counsel attempted to obtain satisfactory resolution to a situation involving the June 15, 1998 installation of an underground equipment vault by BellSouth Telecommunications, Inc. ("BellSouth") on property owned by G&K Services, Inc. ("G&K") immediately adjacent to Ms. Bell's property.

In addition to being a commercial installation located in the middle of a residential (R-5) neighborhood, the above-ground access hatch to the equipment fails to comply with the Atlanta Land Use Development Code requiring maintenance of a front yard having a depth of not less than 30 feet and two side yards each having a width of not less than seven (7) feet. Additionally, the access hatch

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extends to a height well in excess of 30 inches above the general ground level of the graded lot, in further violation of the building code regulations.

We obtained and reviewed a copy of the plans submitted to the City of Atlanta by Bell South to obtain a building permit after Ms. Bell's initial inquiries regarding the legality of the installation resulted in the issuance of a "stop work" order by the City of Atlanta. We believe the documents provided by BellSouth to the City of Atlanta, which ultimately led to the retroactive issuance of a building permit by the City, intentionally misrepresent the dimensions of the equipment that was installed -- in particular, the height of the access hatch above grade. Moreover, the documents provided by BellSouth to the City of Atlanta fail to address the control box installed in the right-of-way, which is also a violation of City of Atlanta building code regulations.

Ms. Bell continues to be victimized by the negative impact that this installation has on the value of her property. Placing a commercial unit such as this on land zoned residential and surrounded by residential uses, makes that unit a nuisance which deprives Ms. Bell of the full enjoyment of the value of her land. Immediate removal of the unit or reimbursement for loss of property value are the only remedies which would adequately compensate my client. Every day that Ms. Bell is deprived of enjoyment of the value of her land, a new cause of action for nuisance is created.

Be advised that Georgia law, both judicial and legislative, recognizes a nuisance where an activity is otherwise lawful and proper. Bell South's maintenance of an underground telecommunications equipment vault, even if otherwise legal, can create a recoverable nuisance. Furthermore, Bell South secured its building permit retroactively by submitting false and misleading building plans, thereby constituting a nuisance *per se*.

Please be advised that unless we are notified within 10 days from the date of this letter of specific plans for the removal of the equipment vault, the access hatch, and the accompanying control panel, we shall commence action immediately thereafter against the City of Atlanta, BellSouth and G&K Services to pursue all legal and equitable remedies that are available to us.

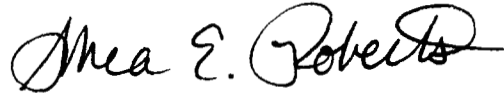
The Candler Park Neighborhood Association has been apprised of this situation and are very much opposed to this encroachment upon their neighborhood. The Association fully supports my client's efforts to resolve this matter, and plans to bring the full weight of public accountability to bear on this issue.

This letter shall also serve as notice to the City of Atlanta of Ms. Bell's claim against the City as required by O.C.G.A. § 36-33-5.

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Sincerely,

McCULLOUGH SHERRILL, LLP

A handwritten signature in black ink, reading "Shea E. Roberts". The signature is fluid and cursive, with the first name "Shea" and last name "Roberts" clearly legible.

Shea E. Roberts

cc: Ms. Carol Bell
Ms. Dempsey Heriahy, President
Candler Park Neighborhood Association
Mr. John Rick, Zoning Director
Candler Park Neighborhood Association

00- *R* -1819